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Federal Communications Commission

DA 97-988

DISPATCHED BY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Strasburg, Colorado)

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MM Docket No. 96-175
RM-8850

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 7, 1997

Released: May 16, 1997

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making* ("Notice"), 11 FCC Rcd 10026 (1996), issued in response to a petition for rule making filed by J.P.I. Radio, Inc. ("petitioner") proposing the allotment of Channel 249C3 to Strasburg, Colorado, and its reservation for noncommercial educational use. Petitioner filed supporting comments in response to the *Notice*.^{1,2} Comments and a counterproposal were filed by Magic City Media, Inc. ("Magic City"), licensee of Station KIGN(FM), Channel 250C1, Cheyenne, Wyoming.³

¹Petitioner's comments, which were filed one-day late, were accompanied by a request for their acceptance. Pursuant to Section 1.415(d) of the Commission's Rules, the acceptance of comments filed after the comment cycle is not contemplated unless specifically requested or authorized by the Commission. While neither criteria is applicable here, we will accept the petitioner's comments to enable us to resolve this proceeding on the basis of a complete record.

²As stated in the *Notice*, petitioner's request, although signed and an address provided, did not include an affidavit verifying statements contained in the petition, as required by Section 1.52 of the Commission's Rules. Petitioner was requested to correct the deficiency in responsive comments, and has complied accordingly.

³Magic City seeks the substitution of Channel 280C3 for proposed Channel 249C3 at Strasburg to accommodate its proposed "one-step" upgrade of Station KIGN(FM) to Channel 249C at Cheyenne. However, we find that Magic City's counterproposal is unacceptable for consideration and therefore it was not placed on Public Notice. Counterproposals must be "technically correct and substantially complete" at the time of filing. See, e.g., *Frederiksted and Charlotte Amalie, Virgin Islands*, 12 FCC Rcd 2406 (1997), and cases cited therein. In order to be considered a viable counterproposal in this proceeding, Magic City should have provided engineering data specifying the exact coordinates at its proposed site for Channel 249C at Cheyenne, and a technical study demonstrating compliance with the minimum distance and city grade coverage requirements of the Commission's Rules from a specified site. See *Independence, California*, 7 FCC Rcd 1738 (1992), and cases cited therein. The mere filing of Magic City's comments announcing its projected modification plans for Station KIGN(FM) at Cheyenne, does not in any manner protect its interest in pursuing a minor modification application. It should have filed its modification application simultaneously with its comments in this proceeding but refrained from doing so, opting instead to file its application "within 90 days" of its comments herein. (However, a recent search of the Commission's records does not reveal a pending application for Station KIGN(FM) at Cheyenne, specifying Class

2. As stated in the *Notice*, petitioner's proposal is premised on a desire to provide noncommercial educational service to Strasburg. However, petitioner advised that the proximity of Station KRMA-TV, Channel 6, Denver, Colorado, precluded the availability of noncommercial educational channels in the reserved band from which a Class C3 channel could operate to provide service to Strasburg. Therefore, petitioner requested the reservation on Channel 249C3 at Strasburg to enable it to achieve its service goal.

3. The *Notice* stated that Commission policy generally refrains from reserving channels in the commercial band for noncommercial use in allotment proceedings except where the use of channels in the reserved band (Channels 201-220) are precluded due to VHF television Channel 6 interference, or the existence of Mexican or Canadian allocations, citing *Butte, Montana*, 9 FCC Rcd 2180 (1994); *Buhl, Montana*, 9 FCC Rcd 2606 (1994). In this instance we have confirmed the unavailability of noncommercial educational channels in the reserved band for allotment to Strasburg due to potential interference to Station KRMA-TV, Channel 6, Denver, Colorado. Therefore, the petitioner having met the necessary criteria to reserve a channel in the commercial band, we will allot Channel 249C3 to Strasburg and reserve it for noncommercial educational use.

4. Channel 249C3 can be allotted to Strasburg consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules provided the transmitter therefor is located at least 10.9 kilometers (6.8 miles) east of the community, utilizing coordinates 39-43-13 and 104-11-58.

5. In light of the above, and pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective June 30, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with regard to Strasburg, Colorado, as follows:

<u>City</u>	<u>Channel No.</u>
Strasburg, Colorado	*249C3, 272A ⁴

C facilities.) Therefore, in light of the technical deficiencies inherent in Magic City's counterproposal, it is dismissed. As a result of our determination we need not address the balance of Magic City's opposition comments nor the petitioner's responsive pleading thereto, as all remaining matters have become moot.

⁴As stated in the *Notice*, Channel 272A was allotted to Strasburg, Colorado, in the context of MM Docket No. 89-61, at coordinates 39-39-37 and 104-15-25. See *Report and Order*, 4 FCC Rcd 7570 (1989), 54 FR 45735, October 31, 1989. Although a construction permit has been issued to Station KAGM(FM) to operate on Channel 272A at Strasburg (File No. BPH-941108JC, as modified BMPH-950908IG), Channel 272A does not appear in 47 CFR 73.202(b), the Table of FM Allotments, at that community. Therefore, we will make the editorial change herein to the Table of FM Allotments to reflect the allotment of Channel 272A at Strasburg, Colorado.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process for noncommercial educational Channel *249C3 at Strasburg, Colorado, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau